

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1048 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

SUNDERJI MANJI

Appearance:

Mr.K.P.Raval, learned Addl. P.P. for the appellant
MR MANOJ N POPAT for Respondent No. 1-9

CORAM : MR.JUSTICE D.K.TRIVEDI

Date of decision: 17/09/2001

ORAL JUDGEMENT

State of Gujarat has filed this Appeal and challenged the order of acquittal recorded by the learned Judicial Magistrate, First Class, Jodiya while disposing of the Criminal Case being Criminal Case No.402/84, wherein the learned Magistrate has acquitted the respondents - accused from the offences punishable under

Section 7 read with Section 16 of the Prevention of Food Adulteration Act.

Mr. K.P.Raval, learned Addl. P.P. during hearing has taken me through the evidence of the witnesses recorded by the trial court as well as the documentary evidence on the record of the case and the Judgment under challenge. According to Mr. Raval the learned Magistrate has committed error in acquitting the respondents - accused when the report of the analysis showed that the commodity Chocolate (Sweet), which was purchased by the complainant from respondent No.1, was adulterated and not found within the standard prescribed under the Prevention of Food Adulteration Act and accordingly he submitted that the learned Magistrate was not right in ignoring such report. On going through the record and on going through the evidence it is transpired that the complainant Food Inspector has filed the complaint against the accused in the trial Court on 16.11.84 and it is the case of the complainant that after disclosing his identity to the accused, where he visited the shop of respondent accused No.1 situate in main Bazar, Dalvasha Vaas, Amran (Jamnagar District) on 12.6.84, he has purchased Chocolate (Sweet) from accused No.1 after following the due procedure and in accordance with the provisions of Act and Rules under the Prevention of Food Adulteration Act and the sample was sent for analysis. After the report of the public analysis was received and as per the report the said sample was not having requisite standard as provided under the Prevention of Food Adulteration Act/Rules and after obtaining sanction to prosecute the accused, as provided under Section 20 of the Act, the complaint was filed. In the evidence of the complainant it is found that on 12.6.84 at 11.30 hours he had visited the shop of M/s. Mahem Trading Company situated at Amran alongwith Panch and obtained sample of chocolate (Sweet) after following the rules as contemplated under the Prevention of Food Adulteration Act/Rules and as per the report of the public analysis the said sample of chocolate was not in accordance with the standard. After the charge was framed against the accused, the prosecution has led evidence to prove the case for the offence under Section 7 read with Section 16 of the Prevention of Food Adulteration Act. Before the Court, the complainant had deposed by disclosing the fact that the sample was taken by him from respondent No.1 in presence of panchas. The said sample was found adulterated and accordingly after obtaining sanction, the complaint was filed. The complainant was thoroughly examined by the defence wherein the suggestion sought for by the accused were

denied in respect of taking sample from accused No.1. According to the defence, the sample of chocolate was not taken as required under the Act and Rules. The Panch Hasmukhlal, who was examined, has not supported the prosecution and he was treated as hostile. The Report Exh.54 of the Public Analyst shows that the sample of Chocolate was not found in accordance with standard laid down in the Act and Rules. It is also to be seen that the Panchanama Exh.48 shows that the sample of chocolate was taken by the complainant from the accused No.1, which was kept in polyethylene bag wherein it was written as "Laxmi (LP)" as well as the picture of Goddess Laxmi was also found. The Bill shows that he has purchased it from Jay Bharat Bakery, Aasha Pura Road, Jamnagar and even the Panchanama shows that the Chocolate (Sweet) is the product of Laxmi (LP) Mumbai. Product in question is not manufactured by accused and no steps were taken by the Food Inspector to join the manufacturer, who has manufactured the said Chocolate (Sweet). On going through the oral as well as documentary evidence on the record of the case and though the report of analysis found that the article, namely, chocolate was not having required standard and as observed by the learned Magistrate that even the complainant has failed to take any steps against the manufacturer of the commodity, the learned Magistrate has acquitted the accused. One of the reason that has been highlighted by the learned Magistrate is that the complainant has not issued any notice to the Laxmi (LP) Mumbai and they were not joined in the present case and accordingly held that the accused cannot be held responsible for the offence. On going through the evidence of the prosecution witnesses including the complainant and though the report of the public analysis found that the sample is found not in accordance with the standard laid down under the Act and Rules, it is difficult for this court to convert the order of acquittal into conviction and accordingly on this ground this Court is not inclined to interfere with said order. Appeal accordingly dismissed.

(D.K.Trivedi, J)